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ABSTRACT

This report reviews existing proposals pertaining to pre-paid college tuition programs among the states. Four major program formats are reviewed: the trust approach, the education IRA (Individual Retirement Account) approach, the tuition certificate approach, and the savings bond approach. The advantages and disadvantages of each approach are discussed along with a consideration of important state policy questions. Michigan's program, which calls for the creation of the Michigan Education Trust, is described as a model of legislation for other states. The results of a survey by the Education Commission of the States (ECS), conducted in October 1987, briefly outline the level of interest of each state in pre-paid college tuition programs; more detailed survey results are included in an appendix. A bibliography of 12 items is presented. Appendix A presents proposed legislation from Florida, Michigan, Missouri, and Wyoming. (JDD)

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STAFF REPORT

88-2

PRE-PAID COLLEGE TUITION PROGRAMS:
AN OVERVIEW

MARCH 7, 1988

BUREAU OF LEGISLATIVE RESEARCH

ARKANSAS GENERAL ASSEMBLY

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Interim Study Proposal 87-29 by Representatives Barclay and Matthews requests the Joint Interim Committee on Education of the Arkansas General Assembly to:

> "Conduct a study of existing guaranteed college tuition programs to determine the feasibility and desirability of establishing similar programs in Arkansas."

SCOPE

The purpose of this report is to review existing proposals pertaining to Pre-paid College Tuition Programs among the states (also referred to as Guaranteed College Tuition Programs). Four major program formats will be identified and reviewed. These major formats include, the Trust Approach, the Education IRA Approach, the Tuition Certificate Approach, and the Savings Bond Approach. The advantages and disadvantages of each approach will be discussed along with a consideration of important state policy questions.

SUMMARY

Pre-paid College Tuition programs briefly existed at the turn of the century although considerable renewed interest in them has been generated since 1986.

The popularity of Pre-paid College Tuition programs by parents has increased primarily in response to significantly rising college tuitions coupled with a decline in federal aid to higher education. Colleges and universities with flat or declining admissions have also expressed interest in such programs.

Programs vary considerably from state to state and from university to university in terms of costs, benefits, administrative organization and the assumption of risk.

Michigan became the first state to enact a Pre-paid College Tuition program

covering all fifteen (15) of its four-year institutions and twenty-nine (29) Community Colleges. Programs have since been enacted in Florida, Indiana, Illinois, Maine, North Carolina, Tennessee, and Wyoming. Programs have passed the General Assembly but have been vetoed by the Governor in California and Wyoming.

A survey conducted by the Education Commission of the States (ECS) in October of 1987 revealed that no less than thirty (30) states are considering Pre-paid College Tuition programs in "moderate to high level" talks.

It may be too early to tell how useful a Pre-paid College Tuition program may be in Arkansas, but several important state policy questions should be addressed as a necessary prerequisite.

I. INTRODUCTION: SOME BASIC CONCEPTS

A "Pre-paid College Tuition Program" (alternatively referred to as a "Guaranteed College Tuition Program") refers to a complex organizational structure whereby parents, grandparents and others could pay for a child's college education, years in advance of actual attendance. Typically, in return for some lump sum payment made when the prospective student might still be an infant, tuition for a standard baccalaureate degree would be guaranteed paid by some legal entity when the child reaches college age. If the child decides not to attend college or cannot meet entrance requirements, the principal investment would be returned, though the interest is usually forfeited.

Pre-paid College Tuition programs vary from state to state and from university to university in terms of structure, program costs, benefits offered, assumption of risk and penalties. Differences exist in administration too. Some programs may be administered by state boards or agencies, while others may be administered by banks or other private entities. Still other programs may be administered by affected colleges or universities without outside assistance.

Pre-paid College Tuition programs are experiencing wide appeal to parents concerned about rising tuition costs and to college and universities concerned with flat or declining student admissions. That the concept is gaining popularity is evidenced by a recent survey conducted by the Education Commission of the States. In that study ten (10) states enacted enabling legislation (vetoed by the governor in two (2) states) and another twenty (20) states indicated serious interest in creating a program. At this writing bills have also been offered at the federal level.

Proponents of Pre-paid College Tuition programs argue that the need for them is real and compelling. An article appearing in State Legislature Magazine (October, 1987) cites a "crisis" in higher education as witnessed by the following observations:

*College Tuition has risen faster than the rate of inflation for the

seventh straight year (1981-1987);

*Student debt has increased 60 percent since 1980;

*Nearly 50 percent of all college students in the United States graduate with a college-related debt in excess of $7,000; and

*Federal aid to students (in constant dollars) has been cut by 20 percent over the past five years while aid for part-time jobs on campus has been cut by 50 percent.

Without question, then, Pre-paid College Tuition programs have become "hot" new issues in higher education which will probably be debated for some time to come. What follows in the next section of this report is an overview of the various formats that such programs are likely to take.

II. PRE-PAID TUITION PROGRAMS: MAJOR FORMATS

Although Pre-paid College Tuition programs can be structured in literally dozens of ways, most programs and proposals can be placed into one of four broad categories for purposes of analysis. Throughout the literature these categories have been referred to as the "Trust Approach", the "Education IRA Approach", the "Tuition Certificate Approach", and the "Savings Bond Approach". We will briefly identify the differences in these approaches to the problem.

1. Trust Approach

This approach normally requires creation of a new state agency or board which would attempt to forecast tuition costs for years into the future. This agency would instruct parents how much money to prepay to meet those costs and would then merge all payments into a centralized investment pool. The goal would then be to earn income from investments in the pool that could meet or exceed actual tuition costs in the future. In any event, the trust would guarantee tuition at any public four-year college or university within a given state. Some programs would guarantee tuition at out-of-state and/or private institutions up to a certain maximum amount per year.

In addition to charging fees and investing funds, the new board or state agency would also be required to promulgate rules and regulations, hire staff, and to set limits each year on the number of program participants in order to keep the trust funds actuarially sound.

Advantages to this approach are that parents would be encouraged to systematically save for their childrens' educations. Also, college attendance would be promoted, particularly in-state if the affected state enacts tax-exempt status to program participants. Similarly if the Internal Revenue Service (IRS) rules that such plans are "contracts for future services" rather than "investments", then the absence of a tax the growth of on these funds would dramatically promote program participation and college attendance.

Disadvantages to this approach include the expenses associated with creating and maintaining a new state agency and/or board. Also, the trust (i.e., the state) will have to assume the risk that investment earnings will keep pace with actual rises in tuition.

Currently programs based upon the Trust Approach have been enacted in Michigan and Wyoming.

2. Education IRA Approach

This approach permits parents to purchase an Education Account that is supposed to work much like an IRA (Individual Retirement Account). Accounts could be established directly with banks, savings and loan associations, insurance companies and other financial institutions. Parents could choose to place their money into mutual funds, certificates of deposit, stocks and other investment vehicles. Parents could contribute up to some maximum amount per year (some states use $2,000) which would ideally be exempt from state income tax, but subject to federal taxation. State tax exemption would be lost, however, if the funds were withdrawn for non-education purposes. When the child reaches college age, the parents would authorize withdrawals for tuition, fees, room and board and related school expenses.

An advantage to this approach is that such programs could be self-directed and thus not involve creation of a new state agency with associated overhead and maintenance costs. Parents would be encouraged to systematically save for their childrens' educations. In-state college actendance could be greatly enhanced if favorable tax treatment is granted to program participants.

With this approach a disadvantage to the state would be the loss of taxable income. A disadvantage to the individual is that tuition is not guaranteed, but will only be funded to the extent that the individual's investment choices have kept up with rising tuitions.

The Education IRA Approach is being considered by the Missouri State

Legislature where it is known as "Family Education Accounts".

3. Tuition Certificate Approach

This approach permits parents to purchase tuition certificates at a specified price per credit hour at participating colleges and universities. The certificates could be redeemed at any time in the future for the stated number of credit hours even if the actual cost per credit hour is higher at the time of redemption.

Advantages to this approach include encouraging parents to plan and save for their childrens' educations along with promoting college attendance at participating institutions. In addition, federal and state governments have not taxed these programs as earned income.

The major disadvantages to this approach is the apparent lack of flexibility since the certificates could only be redeemed at participating institutions.

Participating institutions for higher learning assume the risk that their respective costs per credit hour will not rise faster than investment earnings from the certificates.

The Tuition Certificate Approach is currently being utilized mostly by small private colleges such as Calvin College in Michigan and Harding University in Arkansas.

4. Savings Bond Approach

This approach requires a state to issue General Obligation Bonds which would likely be structured as zero coupon savings bonds with maturities of one to twenty-five years. The initial offering price would be determined by the state and by prevailing market conditions. The bonds could be marketed through banks and other institutions in various denominations as low as $500. An optional bonus payment could be made to bond holders providing

proof that their children are enrolled in in-state colleges or universities. Probably no new administrative structure would be required as underwriting could be accomplished through the use of local banks or brokers.

The Savings Bond Approach would encourage parents to save and plan for their childrens' educations as well as promote college attendance.

A disadvantage to this approach would be the unknown costs and expenses associated with underwriting and advertising the bonds.

The Savings Bond Approach requires the individual to assume the risk that tax-exempt state bonds as an investment will keep pace with rising college tuitions.

At this writing, North Carolina has passed legislation establishing a Savings Bond Program.

III. OTHER STATES: THE MICHIGAN PLAN/ECS SURVEY RESULTS

A Pre-paid College Tuition program is not an especially new concept, as they were briefly experimented with during the latter part of the nineteenth century. More recently, programs have been operating for a few years at various private colleges. The most notable of these is perhaps the program at Duquesne University in Pittsburg, Pennsylvania (See Arkansas Gazette; November 16, 1987).

However, on December 23, 1986 Michigan became the first state in the nation to adopt a statewide plan for a Pre-paid College Tuition program. Although the Michigan plan cannot be implemented by law until a favorable ruling is received by the IRS in terms of tax liability, the program has served as model legislation to other states [Michigan Act No. 316, Public Acts of 1986].

The Michigan Plan

The Michigan Pre-paid College Tuition program calls for the creation of the "Michigan Education Trust" (MET) as an arm of the Michigan Department of Treasury.

The Trust is empowered to guarantee four (4) years of paid college tuition at any of its fifteen (15) Public Four-Year Institutions or its twenty-nine (29) Community Colleges. In return, parents, grandparents or others who are bona fide Michigan residents would be required to make a lump-sum payment for a newborn child of between $4,500 to $6,000, depending on the program option selected by the parent (costs increase with the age of the child). A scale has been developed for periodic payments which could be made annually bi-weekly or through payroll deductions.

MET will pool all funds received and invest them in a diversified portfolio. Regardless of the payment option chosen, parents who make a one-time investment will not make additional contributions. Parents choosing to invest on a periodic basis will contribute an amount that will not change during the life of the payment period. Investment amounts for new program entrants

will be adjusted periodically to reflect Trust earning experience and annual tuition changes.

State officials in Michigan contend that their program is extremely advantageous because it combines safety with flexibility for the individual. Even if a student chooses a private or out-of-state college, MET will pay up to the average tuition cost at its public four-year institutions and have that amount applied against the tuition charges of the independent or out-of-state institution. In addition, contributions made by individuals to MET will be deducted from their income subject to Michigan's income tax. MET also expects the IRS not to look upon the plan as being subject to federal taxation in the form of earned income.

Under the MET plan, the Trust (i.e., the State) will assume the risk that return on investments will outpace tuition increases.

The MET plan will refund investments made by parents in instances whereby a child decides not to enter college. In most cases the principal will be refunded with little or no interest earned depending upon the option chosen by the parents.

Michigan acknowledges that the program is most likely to assist middle and upper-middle income families. However, state officials acknowledge reductions in federal aid to middle income families, and believe existing student programs could more readily be targeted to low income families.

ECS Survey Results

In October of 1987 the ECS (Education Commission of the States) conducted a fifty-state survey to determine the level of interest in Pre-paid College Tuition programs in the United States. Listed below is a summary of their findings. Attached to this report is a copy of the complete survey (See Appendix B).

States were asked by ECS officials to rank their state's interest in Pre-paid College Tuition programs as either "high", "moderate" or "low". States

were also asked to volunteer other pertinent information such as the nature or type of proposal being considered, whether legislation has been prepared, enacted or vetoed and other comments. The data revealed that:

*Seventeen (17) states indicated interest in such programs was "high". Legislation passed the General Assembly in ten (10) of these states (CA, FL, IN, IL, ME, MI, NC, TN, WV, and WY) but was vetoed by the Governor in two (2) -- California and West Virginia. Most programs have not been implemented.

*Thirteen (13) states indicated interest in such programs was "moderate". Most all of those are studying the issues in Legislative Interim Committees.

*Twenty (20) states, including Arkansas, indicated that interest in such programs was "low". In most of those states discussions are taking on an "informal" nature.

IV. COMMENTARY: STATE POLICY QUESTIONS

This report has suggested that interest in Pre-paid College Tuition programs in the United States has reached a significant level and perhaps has still not yet peaked. Proposed programs can take on a variety of formats based upon the needs peculiar to each state. Nonetheless, the literature on this subject is cautionary and mixed. Ultimately, whether or not a particular state should enact a Pre-paid College Tuition program should be based upon the answers to the following policy questions that seem to be recurrent in the available literature. The questions could be phrased as follows:

1. How will the plan fit with other state policies and programs designed to help students meet the costs of a college education? Other programs to be considered include tuition policies, need-based student grant programs, work study programs and student loan programs.

2. Do existing programs and policies offer incentives for families to save for their childrens' educations?

3. How will the plan provide for sufficient flexibility for students to choose the college best suited to their abilities and interests?

4. How will the plan affect families who move to another state?

5. Does a program to provide incentives to save for college seem more feasible than attempts to "guarantee" tuition in the future?

6. Who will bear the risks of the proposed plan? Will it be the individual, the state, the institution or by "non-plan" students attending those institutions?

Consideration of the above questions appears to be the proper prerequisite to enactment and implementation of a Pre-paid College Tuition program in Arkansas.

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APPENDIX A

Proposed Legislation

HB 47

By Representatives Crotty, Friedman, Wetherell, Lombard, Metcalf, Reddick, Liberti, Young

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A bill to be entitled

An act relating to higher education; creating s. 240.551, F.S.; creating the Florida Postsecondary Cost Stabilization Program; providing intent; providing definitions; providing a purpose; creating the Postsecondary Cost Stabilization Trust Fund; providing for contents; creating the Postsecondary Cost Stabilization Board to administer the program; providing for board membership and terms; providing for meetings and staff; providing powers of the board; requiring an annual evaluation of actuarial soundness of the fund; requiring a comprehensive investment plan; authorizing delegation of responsibility for plan administration; requiring annual reporting on the fund; requiring provisions of advance payment contracts for registration and advance payment contracts for dormitory residence; authorizing retention of refund under certain conditions; providing for refunds; providing for contract conversions; providing for multiple contract plans; providing conditions for such plans; requiring board solicitation of proposals for certain services; providing criteria for selection of proposals; providing limitations on use of fund assets; providing for fund expenditure priorities; authorizing contract payments through payroll deduction for certain employees; prohibiting contract purchase as guarantee of admission,

continuation of enrollment, or graduation; creating s. 240.3031, F.S.; creating a State Community College System; providing for membership; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 240.551, Florida Statutes, is created to read:

240.551 Florida Postsecondary Cost Stabilization Program.--

(1) The Legislature recognizes that educational opportunity at the postsecondary level is a critical state interest. It further recognizes that educational opportunity is best ensured through the provision of postsecondary institutions that are geographically and financially accessible. Accordingly, it is the intent of the Legislature that a program be established through which many of the costs associated with postsecondary attendance may be paid in advance and fixed at a guaranteed level for the duration of undergraduate enrollment. It is similarly the intent of the Legislature to provide a program that fosters timely financial planning for postsecondary attendance and to encourage employer participation in such planning through program contributions on behalf of employees and the dependents of employees.

(2) As used in this section:

(a) "Advance payment contract" means a contract entered into by the board and a purchaser pursuant to this section.

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(b) "Board" means the Postsecondary Cost Stabilization Board.

(c) "Fund" means the Postsecondary Cost Stabilization Trust Fund.

(d) "Purchaser" means a person who makes or is obligated to make advance registration or dormitory residence payments in accordance with an advance payment contract.

(e) "Qualified beneficiary" means a resident of this state at the time a purchaser enters into an advance payment contract on behalf of the resident.

(f) "State postsecondary institution" means any community college identified in s. 240.3031 or university identified in s. 240.2011.

(g) "Program" means the Florida Postsecondary Cost Stabilization Program.

(3) There is created a Florida Postsecondary Cost Stabilization Program to provide a medium through which the cost of registration and dormitory residence may be paid in advance of enrollment in a state postsecondary institution at a rate lower than the projected corresponding cost at the time of actual enrollment. Such payments shall be combined and invested in a manner that yields, at a minimum, sufficient interest to generate the difference between the prepaid amount and the cost of registration and dormitory residence at the time of actual enrollment. Students who enroll in a state postsecondary institution pursuant to this section shall be charged no fees in excess of the terms delineated in the advance payment contract.

(4) There is created the Postsecondary Cost Stabilization Trust Fund. The fund shall consist of state appropriations, moneys acquired from other governmental or

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private sources, and moneys remitted in accordance with advance payment contracts. All funds deposited into the trust fund may be invested pursuant to s. 215.47; however, such investment shall not be mandatory. Interest income accruing to the trust fund shall increase the total funds available for the program. Any balance contained within the fund at the end of a fiscal year shall remain therein and shall be available for carrying out the purposes of the program. In the event that interest income exceeds the amount necessary for program administration and disbursements, the board may designate an additional percentage of the fund to serve as a contingency fund.

(5) The Florida Postsecondary Cost Stabilization Program shall be administered by the Postsecondary Cost Stabilization Board. The Postsecondary Cost Stabilization Board is hereby created as a body corporate with all the powers of a body corporate for the purposes delineated in this section. The board shall be assigned to and administratively housed within the Department of Education, but it shall independently exercise the powers and duties specified in this section. The board shall consist of nine members to be composed of the Insurance Commissioner and Treasurer, Comptroller, Auditor General, Chancellor of the Board of Regents, Executive Director of the State Board of Community Colleges, and four members appointed by the Governor and subject to confirmation by the Senate. Each member appointed by the Governor shall possess knowledge, skill, and experience in the areas of actuary, risk management, or investment management. Members appointed by the Governor shall serve terms of 3 years, except that in making the initial appointments, the Governor shall appoint one member to serve

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for 1 year, one member to serve for 2 years, and one member to serve for 3 years. Any person appointed to fill a vacancy on the board shall be appointed in a like manner and shall serve for only the unexpired term. Any member shall be eligible for reappointment and shall serve until a successor qualifies. Members of the board shall serve without compensation, but shall be reimbursed for per diem and travel in accordance with s. 112.061. Each member of the board shall file a full and public disclosure of his financial interests pursuant to s. 8, Art. II of the State Constitution and corresponding statute.

(a) The Governor shall appoint a member of the board to serve as the initial chairman of the board. Thereafter, the board shall elect a chairman annually. The board shall annually elect a board member to serve as vice chairman and shall designate a secretary-treasurer who need not be a member of the board. The secretary-treasurer shall keep a record of the proceedings of the board and shall be the custodian of all printed material filed with or by the board and of its official seal. Notwithstanding the existence of vacancies on the board, a majority of the members shall constitute a quorum. The board shall take no official action in the absence of a quorum. The board shall meet, at a minimum, on a quarterly basis at the call of the chairman.

(b) The board shall appoint an executive director to serve as the chief administrative and operational officer of the board and to perform other duties assigned to him by the board.

(c) The board shall have the powers necessary or proper to carry out the provisions of this section, including, but not limited to, the power to:

1. Adopt an official seal and bylaws.

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2. Sue and be sued.

3. Make and execute contracts and other necessary instruments.

4. Establish agreements or other transactions with federal, state, and local agencies, including state universities and community colleges.

5. Invest funds not required for immediate disbursement.

6. Appear in its own behalf before boards, commissions, or other governmental agencies.

7. Hold, buy, and sell any instruments, obligations, securities, and property determined appropriate by the board.

8. Require a reasonable length of state residence for qualified beneficiaries.

9. Restrict the number of participants in the program. However, any person denied participation solely on the basis of such restriction shall be granted priority for participation during the succeeding year.

10. Segregate contributions and payments to the fund into various accounts and funds.

11. Contract for necessary goods and services, employ necessary personnel, and engage the services of private consultants, actuaries, managers, legal counsel, and auditors for administrative or technical assistance.

12. Solicit and accept gifts, grants, loans, and other aids from any source or participate in any other way in any government program to carry out the purposes of this section.

13. Require and collect administrative fees and charges in connection with any transaction and impose reasonable penalties, including default, for delinquent

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payments or for entering into an advance payment contract on a fraudulent basis.

14. Procure insurance against any loss in connection with the property, assets, and activities of the fund or the board.

15. Impose reasonable time limits on use of the tuition benefits provided by the program. However, any such limitation shall be specified within the advance payment contract.

16. Delineate the terms and conditions under which payments may be withdrawn from the fund and impose reasonable fees and charges for such withdrawal. Such terms and conditions shall be specified within the advance payment contract.

17. Provide for the receipt of contributions in lump sums or installment payments.

18. Establish other policies, procedures, and criteria to implement and administer the provisions of this section.

(d) The board shall administer the fund in a manner that is sufficiently actuarially sound to defray the obligations of the program. The board shall annually evaluate or cause to be evaluated the actuarial soundness of the fund. If the board perceives a need for additional assets in order to preserve actuarial soundness, the board may adjust the terms of subsequent advance payment contracts to ensure such soundness.

(e) The board shall establish a comprehensive investment plan for the purposes of this section. The board may place assets of the fund in savings accounts or use the same to purchase fixed or variable life insurance or annuity contracts, securities, evidence of indebtness, or other

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investment products pursuant to the comprehensive investment plan and in such proportions as may be designated or approved under that plan. Such insurance, annuity, savings, or investment products shall be underwritten and offered in compliance with the applicable federal and state laws, regulations, and rules by persons who are duly authorized by applicable federal and state authorities. Within the comprehensive investment plan, the board may authorize investment vehicles, or products incident thereto, as may be available or offered by qualified companies or persons.

(f) The board may delegate responsibility for administration of the comprehensive investment plan required in paragraph (e) to a person the board determines to be qualified. Such person shall be compensated by the board. Directly or through such person, the board may contract with a private corporation or institution to provide such services as may be a part of the comprehensive investment plan or as may be deemed necessary or proper by the board or such person, including, but not limited to, providing consolidated billing, individual and collective recordkeeping and accountings, and asset purchase, control, and safekeeping.

(g) The board shall annually prepare or cause to be prepared a report setting forth in appropriate detail an accounting of the fund and a description of the financial condition of the program at the close of each fiscal year. Such report shall be submitted to the Speaker of the House of Representatives, President of the Senate, and members of the State Board of Education on or before November 15 each year. In addition, the board shall make the report available to purchasers of advance payment contracts. The accounts of the

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fund shall be subject to annual audits by the Auditor General or his designee.

(6)(a) The board shall construct advance payment contracts for registration and advance payment contracts for dormitory residence in accordance with the provisions of this section. The contents of both such contracts shall include, but not be limited to, the following:

1. The amount of the payment or payments and the number of payments required from a purchaser on behalf of a qualified beneficiary.

2. The terms and conditions under which purchasers shall remit payments, including, but not limited to, the date or dates upon which each payment shall be due.

3. Provisions for late payment charges and for default.

4. Provisions for penalty fees for withdrawals from the fund.

5. The name and date of birth of the qualified beneficiary on whose behalf the contract is drawn and the terms and conditions under which another person may be substituted as the qualified beneficiary.

6. The name of any persons who may terminate the contract. The terms of the contract shall specify whether the contract may be terminated by the purchaser, the qualified beneficiary, a specific designated person, or any combination of these persons.

7. The terms and conditions under which a contract may be terminated, the name of the person entitled to any refund due as a result of termination of the contract pursuant to such terms and conditions, and the amount of refund, if any, due to the person so named.

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8. The time limitations, if any, within which the qualified beneficiary must claim his benefits through the program.

9. Other terms and conditions deemed by the board to be necessary or proper.

(b) In addition to the provisions of paragraph (a), an advance payment contract for registration shall include, but not be limited to, the following:

1. The number of semester credit hours contracted by the purchaser.

2. The state postsecondary system toward which the contracted credit hours will be applied.

3. The assumption of a contractual obligation by the board to the qualified beneficiary to provide for a specified number of semester credit hours of undergraduate instruction at a state postsecondary institution, not to exceed the average number of credit hours required for the conference of the degree that corresponds to the plan purchased on behalf of the qualified beneficiary.

(c) In addition to the provisions of paragraph (a), an advance payment contract for dormitory residence shall include, but not be limited to, the following:

1. The number of semesters of dormitory residence contracted by the purchaser.

2. The assumption of a contractual obligation by the board to the qualified beneficiary to provide for a specified number of semesters of dormitory residence at a state university, not to exceed the maximum number of semesters of full-time enrollment required for the conference of a baccalaureate degree.

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(d) An advance payment contract may provide that contracts which have not been terminated or the benefits exercised within a specified period of time shall be considered terminated and the board shall retain the refund amounts otherwise payable.

(e) No refund provided pursuant to subparagraph (a)7. shall exceed the amount paid into the fund by the purchaser. In the event that an advance payment contract is converted from a university to a community college registration plan, the refund amount shall be reduced by the amount transferred to a community college on behalf of the qualified beneficiary. No refund shall be authorized through an advance payment contract if the qualified beneficiary has completed more than 50 percent of the semester credit hours allowed pursuant to the specific plan contracted; however, this provision shall not apply to persons who convert from a university to a community college plan and terminate the contract upon graduation from the community college.

(f) At a minimum, the board shall make advance payment contracts available for three independent plans to be known as the community college plan, the university plan, and the dormitory residence plan, respectively.

(a) Through the community college plan, the advance payment contract shall provide prepaid registration fees for a specified number of undergraduate semester credit hours not to exceed the average number of hours required for the conference of an associate degree. The cost of participation in the community college plan shall be based primarily on the average current and projected registration fees within the State Community College System and the age of the qualified beneficiary at the time of enrollment in the plan. Qualified

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beneficiaries shall bear the cost of any laboratory fees associated with enrollment in specific courses. Each qualified beneficiary shall be classified as a resident for tuition purposes pursuant to s. 240.1201 regardless of his actual legal residence.

(b) Through the university plan, the advance payment contract shall provide prepaid registration fees for a specified number of undergraduate semester credit hours not to exceed the average number of hours required for the conference of a baccalaureate degree. The cost of participation in the university plan shall be based on the current and projected registration fees within the State University System and the age of the qualified beneficiary at the time of enrollment in the plan. Qualified beneficiaries shall bear the cost of any laboratory fees associated with enrollment in specific courses. In the event that a qualified beneficiary fails to be admitted to a state university or chooses to attend a community college, the qualified beneficiary may convert the average number of semester credit hours required for the conference of an associate degree from a university plan to a community college plan and may retain the remaining semester credit hours in the university plan or may request a refund for prepaid credit hours in excess of the average number of semester credit hours required for the conference of an associate degree. Each qualified beneficiary shall be classified as a resident for tuition purposes pursuant to s. 240.1201 regardless of his actual legal residence.

(c) Through the dormitory residence plan, the advance payment contract shall provide prepaid housing fees for a maximum of 10 semesters of full-time undergraduate enrollment in a state university. Dormitory residence plans shall be

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purchased in increments of 2 semesters. The cost of participation in the dormitory residence plan shall be based primarily on the average current and projected housing fees within the State University System and the age of the qualified beneficiary at the time of enrollment in the plan. Qualified beneficiaries shall bear the cost of any additional elective charges such as laundry service or long-distance telephone service. Each state university may specify the residence halls eligible for inclusion in the plan. In addition, any state university may request immediate termination of a dormitory residence contract based on a violation or multiple violations of rules of the residence hall. Qualified beneficiaries shall have the highest priority in the assignment of housing within university residence halls. In the event that sufficient housing is not available for all qualified beneficiaries, the board shall refund the purchaser or qualified beneficiary an amount equal to the fees charged for dormitory residence during that semester. No such refund shall be granted for a period in excess of 1 semester; however, a refund may be granted for each of 2 consecutive semesters. Community college residence halls shall be prohibited from inclusion in the dormitory residence plan.

(8) The board shall solicit proposals for the operation of the Florida Postsecondary Cost Stabilization Program pursuant to s. 287.057, through which the board shall contract for the services of a records administrator, a trustee services firm, and one or more product providers.

(a) The records administrator shall be the entity designated by the board to conduct the daily operations of the program on behalf of the board. The goals of the board in selecting a records administrator shall be to provide all

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purchasers with the most secure, well-diversified, and beneficially administered postsecondary cost stabilization plan possible, to allow all qualified firms interested in providing such services equal consideration, and to provide such services to the state at no cost and to the purchasers at the lowest cost possible. Evaluations of proposals submitted pursuant to this paragraph shall include, but not be limited to, the following criteria:

1. Fees and other costs charged to purchasers that affect account values or operational costs related to the program.

2. Past experience in records administration and current ability to provide timely and accurate service in the areas of records administration, audit and reconciliation, plan communication, participant service, and complaint resolution.

3. Sufficient staff and computer capability for the scope and level of service expected by the board.

4. Financial history and current financial strength and capital adequacy to provide administrative services required by the board.

(b) The trustee services firm shall be the entity designated by the board to select and supervise investment programs on behalf of the board. The goals of the board in selecting a trustee services firm shall be to obtain the highest standards of professional trustee services, to allow all qualified firms interested in providing such services equal consideration, and to provide such services to the state at no cost and to the purchasers at the lowest cost possible. Evaluations of proposals submitted pursuant to this paragraph

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shall include, but not be limited to, the following criteria:

1. Adequacy of trustee services for supervision and management of the program, including current operations and staff organization and commitment of management to the proposal.

2. Capability to execute program responsibilities within time and regulatory constraints.

3. Past experience in trustee services and current ability to maintain regular and continuous interactions with the board, records administrator, and product provider.

4. The minimum purchaser participation assumed within the proposal and any additional requirements of purchasers.

5. Adequacy of technical assistance and services proposed for staff.

6. Adequacy of a management system for evaluating and improving overall trustee services to the program.

7. Adequacy of facilities, equipment, and electronic data processing services.

8. Detailed projections of administrative costs, including the amount and type of insurance coverage, and detailed projections of total costs.

(c)1. The product providers shall be the entities designated by the board to develop investment portfolios on behalf of the board to achieve the purposes of this section. Product providers shall be limited to authorized insurers as defined in s. 624.09, banks as defined in s. 658.12, associations as defined in s. 665.012, and investment companies as defined in the Investment Company Act of 1940. All product providers shall have their principal place of business and corporate charter located and registered in the United States. In addition, all product providers shall agree

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to bear the cost of any investment liability that might otherwise undermine the purpose of the program. Each authorized insurer shall evidence superior performance overall on an acceptable level of surety in meeting its obligations to its policyholders and other contractual obligations. Each bank or association shall be able to provide, at a minimum, sufficient United States Government agency insurance to equal each purchaser account or be prepared to collateralize 100 percent of each purchaser account with United States Government insured securities pledged at current market value and held in an account in the name of the board. Only qualified public depositories approved by the State Insurance Commissioner and Treasurer shall be eligible for board consideration. Each investment company shall provide investment plans as specified within the request for proposals.

2. The goals of the board in selecting a product provider company shall be to provide all purchasers with the most secure, well-diversified, and beneficially administered postsecondary cost stabilization plan possible, to allow all qualified firms interested in providing such services equal consideration, and to provide such services to the state at no cost and to the purchasers at the lowest cost possible. Evaluations of proposals submitted pursuant to this paragraph shall include, but not be limited to, the following criteria:

a. Fees and other costs charged to purchasers that affect account values or operational costs related to the program.

b. Past and current investment performance, including investment and interest rate history, guaranteed minimum rates

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of interest, consistency of investment performance, and any terms and conditions under which moneys are held.

c. Past experience and ability to provide timely and accurate service in the areas of records administration, benefit payments, investment management, and complaint resolution.

d. Financial history and current financial strength and capital adequacy to provide products, including operating procedures and other methods of protecting program assets.

(9) The assets of the fund shall be maintained, invested, and expended solely for the purposes of this section and shall not be loaned, transferred, or otherwise used by the state for any purpose other than the purposes of this section. This subsection shall not be construed to prohibit the board from investing in, by purchase or otherwise, bonds, notes, or other obligations of the state or an agency or instrumentality of the state. Unless otherwise specified by the board, assets of the fund shall be expended in the following order of priority:

(a) To make payments to state postsecondary institutions on behalf of qualified beneficiaries.

(b) To make refunds upon termination of advance payment contracts.

(c) To pay the costs of program administration and operations.

(10) The state or any state agency, county, municipality, or other political subdivision may, by contract or collective bargaining agreement, agree with any employee to remit payments toward advance payment contracts through payroll deductions made by the appropriate officer or officers

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of the state. Such payments shall be held and administered in accordance with this section.

(11) Nothing in this section shall be construed as a promise or guarantee that a qualified beneficiary will be admitted to a state postsecondary institution or to a particular state postsecondary institution, will be allowed to continue enrollment at a state postsecondary institution after admission, or will be graduated from a state postsecondary institution.

Section 2. Section 240.3031, Florida Statutes, is created to read:

240.3031 State Community College System defined.--The State Community College System shall consist of the following:

(1) The State Board of Community Colleges of the Division of Community Colleges of the Department of Education.

(2) Brevard Community College.

(3) Broward Community College.

(4) Central Florida Community College.

(5) Chipola Junior College.

(6) Daytona Beach Community College.

(7) Edison Community College.

(8) Florida Community College at Jacksonville.

(9) Florida Keys Community College.

(10) Gulf Coast Community College.

(11) Hillsborough Community College.

(12) Indian River Community College.

(13) Lake City Community College.

(14) Lake-Sumter Community College.

(15) Manatee Community College.

(16) Miami-Dade Community College.

(17) North Florida Junior College.

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(18) Okaloosa-Walton Junior College.

(19) Palm Beach Junior College.

(20) Pasco-Hernando Community College.

(21) Pensacola Junior College.

(22) Polk Community College.

(23) St. Johns River Community College.

(24) St. Petersburg Junior College.

(25) Santa Fe Community College.

(26) Seminole Community College.

(27) South Florida Community College.

(28) Tallahassee Community College.

(29) Valencia Community College.

Section 3. This act shall take effect upon becoming a law.

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HOUSE SUMMARY

Creates the Florida Postsecondary Cost Stabilization Program to provide a medium through which the cost of registration and dormitory residence may be paid in advance of enrollment in a state university or community college at a rate lower than the projected corresponding cost at the time of actual enrollment.

Creates a trust fund to be administered by a board assigned to the Department of Education. Requires the establishment of a comprehensive investment plan for assets of the fund. Requires an annual accounting of the fund and description of the financial condition of the program. Provides limitations on use of fund assets and provides fund expenditure priorities.

Requires the board to construct advance payment contracts for registration and advance payment contracts for dormitory residence. Provides for refunds due as a result of termination of a contract and retention by the board of certain refund amounts. Provides for conversion of contracts. Requires the board to make advance payment contracts for a community college plan, a university plan, and a dormitory residence plan. Provides conditions for such plans. Authorizes contract payments through payroll deduction for certain employees. Prohibits contract purchase as a guarantee of admission to a university or community college, continuation of enrollment, or graduation. Requires board solicitation of proposals for certain services and provides criteria for selection of proposals.

Creates a State Community College System and provides for membership therein.

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Act No. 316
Public Acts of 1986
Approved by the Governor
December 23, 1986
Filed with the Secretary of State
December 23, 1986

STATE OF MICHIGAN

83RD LEGISLATURE

REGULAR SESSION OF 1986

Introduced by Reps. Kosteva, Lynn Owen, Busch, Leland, Barns, Hillegonds, Bartnik, Hood, Stabenow, Gubow, Saunders, Ciaramitaro, Hunter, Harrison, Mathieu, Knight, Porreca, Sitz, Stallworth, Smith, Emerson, Koivisto, Gagliardi, Dutko, Terrell, Dodak, Scott, Keith, Nash, Bennett, Rocca, Weeks, Berman, Oxender, Bender, Jondahl, DeMars, Hertel, Palamara, Joe Young, Jr., Griffin, Gnodtke, Trim, Richard A. Young, Brown, Honigman, O'Neill, Bennane, Cherry, Alley, Joe Young, Sr., Geerlings, Fitzpatrick, Stopczynski, London, Perry Bullard, Clack, Murphy, Hollister, Kilpatrick, Maynard, Willis Bullard, Muxlow and Jacobetti

Rep. Hoffman named co-sponsor

ENROLLED HOUSE BILL No. 5505

AN ACT to create the Michigan education trust; to prescribe the powers and duties of the trust and of its board of directors; to provide for advance tuition payment contracts; to establish an advance tuition payment fund and to provide for its administration; to provide for remedies; and to repeal certain acts and parts of acts on specific dates.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "Michigan education trust act".

Sec. 2. The legislature hereby finds and declares the following:

(a) It is an essential function of state government to forever encourage schools and the means of education, as provided in section 1 of article VIII of the state constitution of 1963.

(b) It is a responsibility of state government to maintain state institutions of higher education as provided by section 4 of article VIII of the state constitution of 1963.

(c) It is an essential function of state government to encourage attendance at state institutions of higher education.

(d) Tuition costs at public institutions of higher education are difficult for many to afford and are difficult to predict in order to enable individuals and families to plan.

(e) It is in the best interest of the people of this state to foster public higher education in order to provide well-educated citizens.

(a) The amount of the payment or payments required from the purchaser on behalf of the qualified beneficiary.

(b) The terms and conditions for making the payment, including, but not limited to, the date or dates upon which the payment, or portions of the payment, shall be due.

(c) Provisions for late payment charges and for default.

(d) The name and age of the qualified beneficiary under the contract. The purchaser, with the approval of and on conditions determined by the trust, may subsequently substitute another person for the qualified beneficiary originally named.

(e) The number of credit hours covered by the contract.

(f) The name of the person entitled to terminate the contract, which, as provided by the contract, may be the purchaser, the qualified beneficiary, or a person to act on behalf of the purchaser or qualified beneficiary, or any combination of these persons.

(g) The terms and conditions under which the contract may be terminated and the amount of the refund, if any, to which the person terminating the contract, or specifically the purchaser or designated qualified beneficiary if the contract so provides, shall be entitled upon termination.

(h) The assumption of a contractual obligation by the trust to the qualified beneficiary on its own behalf and on behalf of the state to provide for credit hours of higher education, not to exceed the credit hours required for the granting of a baccalaureate degree, at any state institution of higher education to which the qualified beneficiary is admitted. The advance tuition payment contract shall provide for the credit hours of higher education that a qualified beneficiary may receive under the contract if the qualified beneficiary is not entitled to in-state tuition rates.

(i) The period of time from the beginning to the end of which the qualified beneficiary may receive the benefits under the contract.

(j) All other rights and obligations of the purchaser and the trust.

(k) Other terms, conditions, and provisions as the trust considers in its sole discretion to be necessary or appropriate.

(2) The form of any advance tuition payment contract to be entered into by the trust shall first be approved by the state administrative board.

(3) The trust shall make any arrangements that are necessary or appropriate with state institutions of higher education in order to fulfill its obligations under advance tuition payment contracts, which arrangements may include, but need not be limited to, the payment by the trust of the then actual in-state tuition cost on behalf of a qualified beneficiary to the state institution of higher education.

(4) An advance tuition payment contract shall provide that the trust provide for the qualified beneficiary to attend a community or junior college in this state before entering a state institution of higher education if the beneficiary so chooses and that the contract may be terminated pursuant to section 8 after completing the requirements for a degree at the community or junior college in this state or before entering the state institution of higher education.

(5) An advance tuition payment contract may provide that, if after a number of years specified in the contract the contract has not been terminated or the qualified beneficiary's rights under the contract have not been exercised, the trust, after making a reasonable effort to locate the purchaser and qualified beneficiary or the agent of either, shall retain the amounts otherwise payable and the rights of the qualified beneficiary, the purchaser, or the agent of either shall be considered terminated.

Sec. 7. (1) At a minimum, the trust shall offer advance tuition payment contracts of the 2 types set forth in subsections (2) and (3), to be known as Plan A and Plan B, respectively.

(2) Under Plan A:

(a) A payment or series of payments shall be required from the purchaser on behalf of a qualified beneficiary.

(b) If an advance tuition payment contract is terminated before a qualified beneficiary earns a high school diploma or reaches the age of majority, or pursuant to section 8(1)(d), the trust shall refund the face amount of the payment or payments in accordance with the terms of the contract, less any administrative fee specified in the contract, but shall not refund any investment income attributable to the payments.

(c) Except as provided in subdivision (d), the trust shall provide for the qualified beneficiary to attend a state institution of higher education at which the qualified beneficiary attends for the number of credit hours required by the institution for the awarding of a baccalaureate degree, without further tuition cost to the qualified beneficiary, except as provided in section 6(1) for a qualified beneficiary who is not entitled to in-state tuition rates.

(2) Except as provided in section 7(2)(b) and (3)(b), an advance tuition payment contract shall provide for a refund pursuant to this section to a person to whom the refund is payable under the contract upon termination of the contract. If the qualified beneficiary has a high school diploma or has reached the age of majority, and attends an institution of higher education, the amount of a refund, except as provided in subsection (4), shall be the lesser of the average tuition cost of all state institutions of higher education on the date of termination of the contract, or the face amount of the payment or payments and any accrued investment income attributable to the payment or payments, if he or she is covered by alternative 1, as described in section 7(5), or the lowest tuition cost of all state institutions of higher education on the date of termination of the contract if he or she is covered by alternative 2 or does not attend an institution of higher education. The amount of a refund shall be reduced by an appropriate percentage if the purchaser entered into an advance tuition payment contract that provided for a fixed number of credit hours less than the total number of credit hours required by a state institution of higher education for the awarding of a baccalaureate degree, by the amount transferred to a community or junior college on behalf of a qualified beneficiary when the contract is terminated as provided in section 6(4), and by the amount transferred to a state institution of higher education on behalf of a qualified beneficiary. Termination of a contract and the right to receive a refund shall not be authorized under the contract if the qualified beneficiary has completed more than 1/2 of the credit hours required by the state institution of higher education for the awarding of a baccalaureate degree. However, this provision shall not affect the termination and refund rights of a graduate of a community or junior college. Pursuant to this subsection and except as provided by subsection (3), the trust shall make refund payments in equal installments over 4 years and not later than August 15 of the year due.

(3) An advance tuition payment contract shall authorize a person, who is entitled under the advance tuition payment contract to terminate the contract, to direct payment of the refund to an independent degree-granting college or university located in this state or to a community or junior college located in this state. If directed to make payments pursuant to this subsection, the trust shall transfer to the designated institution an amount equal to the tuition due for the qualified beneficiary, but the trust shall not transfer a cumulative amount greater than the refund to which the person is entitled. If the refund exceeds the total amount of transfers directed to the designated institution, the excess shall be returned to the person to whom the refund is otherwise payable.

(4) Notwithstanding any other section of this act, the amount of a refund paid upon termination of the advance tuition payment contract by a person who directs the trust pursuant to subsection (3) to transfer the refund to an independent degree-granting college or university located in this state shall not be less than the prevailing weighted average tuition cost of state institutions of higher education for the number of credit hours covered by the contract on the date of termination. In calculating the amount of a refund for an advance payment contract containing the restrictions provided by section 7(5), the prevailing weighted average tuition cost shall be based upon only those state institutions of higher education at which the qualified beneficiary could have received sufficient credit hours for a baccalaureate degree.

Sec. 9. (1) There is created under the jurisdiction and control of the board an advance tuition payment fund. Payments received by the trust from purchasers on behalf of qualified beneficiaries or from any other source, public or private, shall be placed in the fund. The fund may be divided into separate accounts.

(2) Assets of the trust shall not be considered state money, common cash of the state, revenue for the purposes of sections 26 to 34 of article IX of the state constitution of 1963, nor state money for the purposes of Act No. 259 of the Public Acts of 1982, being sections 12.61 to 12.64 of the Michigan Compiled Laws.

(3) Unless otherwise provided by resolution of the board, assets of the trust shall be expended in the following order of priority:

(a) To make payments to state institutions of higher education on behalf of qualified beneficiaries.

(b) To make refunds upon termination of an advance tuition payment contract.

(c) To pay the costs of administration and organization of the trust and the fund.

(4) Assets of the trust may be invested in any instrument, obligation, security, or property considered appropriate by the trust and may be pooled for investment purposes with investments of the state, including, but not limited to, state pension funds, on such terms and conditions as are agreeable to the trust.

Sec. 10. (1) The board shall consist of the state treasurer, and 8 other members with knowledge, skill, and experience in the academic, business, or financial field, who shall be appointed by the governor, by and with the advice and consent of the senate. Not more than 2 of the 8 appointed members of the board shall be, during their term of office on the board, either officials, appointees, or employees of this state. Of the 6 remaining members appointed by the governor, 1 shall be appointed from 1 or more nominees of the speaker of the house of representatives, 1 shall be appointed from 1 or more nominees of the majority leader of the senate, 1 shall be a president of a state institution of higher education who shall be appointed from nominees of the president's

(k) Enter into contracts on behalf of the state.

(*l*) Administer the funds of the trust.

(m) Indemnify or procure insurance indemnifying any member of the board from personal loss or accountability from liability resulting from a member's action or inaction as a member of the board, including, but not limited to, liability asserted by a person on any bonds or notes of the authority.

(n) Impose reasonable time limits on use of the tuition benefits provided by the trust, if the limits are made a part of the contract.

(o) Define the terms and conditions under which money may be withdrawn from the trust, including, but not limited to, reasonable charges and fees for any such withdrawal, if the terms and conditions are made a part of the contract.

(p) Provide for receiving contributions in lump sums or periodic sums.

(q) Establish policies, procedures, and eligibility criteria to implement this act.

(r) Enter into arrangements with Michigan institutions of higher education for the trust to offer on behalf of the institution advance tuition payment contracts under which the Michigan institution of higher education will be contractually obligated to provide a beneficiary under the contract with credit hours of higher education in addition to those required for a baccalaureate degree.

Sec. 12. The board shall annually prepare or cause to be prepared an accounting of the trust and shall transmit a copy of the accounting to the governor, the majority leader of the senate, the speaker of the house of representatives, and the respective minority leaders of the senate and house of representatives. The board shall also make available the accounting of the trust to the purchasers of the trust. The accounts of the board shall be subject to annual audits by the state auditor general or a certified public accountant appointed by the auditor general.

Sec. 13. (1) The trust shall be administered in a manner reasonably designed to be actuarially sound such that the assets of the trust will be sufficient to defray the obligations of the trust.

(2) In the accounting of the trust made pursuant to section 12, the trust board shall annually evaluate and cause to be evaluated by a nationally recognized actuary the actuarial soundness of the trust and determine the additional assets needed, if any, to defray the obligations of the trust. If there are not funds sufficient to ensure the actuarial soundness of the trust as determined by the nationally recognized actuary, the trust shall adjust payments of subsequent purchasers to ensure its actuarial soundness. If there are insufficient numbers of new purchasers to ensure the actuarial soundness of a plan of the trust, the available assets of the trust attributable to the plan shall be immediately prorated among the then existing contracts, and these shares shall be applied, at the option of the person to whom the refund is payable or would be payable under the contract upon termination of the contract, either towards the purposes of the contract for a qualified beneficiary or disbursed to the person to whom the refund is payable or would be payable under the contract upon termination of the contract.

(3) An advance tuition payment contract shall not be entered by the trust until the internal revenue service has issued a favorable ruling or opinion that the purchaser of the advance tuition payment contract will not be considered actually or constructively to be in receipt of income. If an unfavorable ruling or opinion with regard to this issue is rendered by the internal revenue service, the board shall present a report to the legislature outlining recommendations for the modification and continuance of the program, including a recommendation of whether the trust may offer contracts on behalf of itself to provide for the advance purchase of incremental portions of the number of credit hours necessary for a baccalaureate degree.

(4) Before entering into advance tuition payment contracts with purchasers, the state shall solicit answers to appropriate ruling requests from the securities and exchange commission regarding the application of federal security laws to the trust. No contracts shall be entered without the authority making known the status of the request.

Sec. 14. State institutions of higher education, purchasers, and qualified beneficiaries may enforce this act and any contract entered into pursuant to this act in the circuit court for Ingham county.

Sec. 15. The property of the trust and its income and operation shall be exempt from all taxation by this state or any of its political subdivisions.

Sec. 16. The trust, in its discretion, may contract with others, public or private, for the provision of all or a portion of the services necessary for the management and operation of the trust. The trust shall also endeavor to work with private sector investment managers, state institutions of higher education, and independent degree-granting colleges and universities in this state to study the feasibility of instituting programs between these

This act is ordered to take immediate effect.

Daniel H. Evans

Clerk of the House of Representatives.

William C. Kendall

Secretary of the Senate.

Approved .....

.....

Governor.

L. R. No. 526-3

SENATE COMMITTEE SUBSTITUTE NO. 2

FOR

SENATE BILL NO. 48

AN ACT

Relating to tax incentives for contribution to family education accounts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section 1. 1. In determining his Missouri adjusted gross income pursuant to chapter 143, RSMo, a Missouri individual taxpayer may subtract from his federal adjusted gross income amounts which during the taxable year are contributed by him to a family education account, as defined in subsection 5 of this section, limited to two thousand dollars in a single year, or in the case of multiple contributors, that part of two thousand dollars which has not been previously contributed to the fund in the current taxable year. Except in the case of a rollover described in subsection 17 of this section, any contributions to a family education account must be in cash.

2. In determining his Missouri adjusted gross income pursuant to chapter 143, RSMo, a Missouri individual taxpayer who has contributed to a family education account may subtract from his federal adjusted gross income amounts included in gross income for federal income tax purposes by reason of any income realized by the account or because of any payment by the account to, or on behalf of, an eligible beneficiary for the purpose specified in subdivision (1) of subsection 6 of this section.

3. For returns filed after the year in which the eligible beneficiary, as defined in subsection 9 of this section, reaches the age of eighteen, no further contributions may be made to that beneficiary's family education account.

transfer under subsection 14 of this section.

7. An account meets the requirements of this section only if:

(1) It constitutes a custodial account, the assets of which are held by a bank, as defined in section 401(d)(1) of the Federal Internal Revenue Code, in an account located in a branch in Missouri; or

(2) It is a Missouri trust created under laws of the state of Missouri and with a trustee physically located within this state.

8. In the case of a trust referred to in subdivision (2) of subsection 7 of this section, the assets may be held by a bank, broker, insurance company, savings and loan association, credit union or other person who demonstrates to the satisfaction of the department of revenue that the manner in which he will administer the trust will be consistent with the requirements of this section. Such a trust shall not be disqualified under this section merely because a person other than the trustee so administering the trust may be granted, under the trust instrument, the power to control the investment of the trust funds either by directing investments, including reinvestments, disposals and exchanges, or by disapproving proposed investments, including reinvestments, disposals and exchanges. Such a trust may use annuity, endowment or life insurance contracts of a life insurance company exclusively as the funding media of the trust, if so provided by regulations of the department of revenue, and if the life insurance company supplies annually such information about trust transactions as the department of revenue shall by regulations prescribe. For purposes of this subsection, the term "bank" shall have the same meaning ascribed to it by the last sentence of section 401(d)(1) of the Federal Internal Revenue

means a person establishing an account under this section who has the relationship to the beneficiary described in paragraph (1), (2), (3) or (6) of section 152(a) of the Federal Internal Revenue Code.

12. For purposes of this section, the term "contributor" means a person of any or no relation to the beneficiary who consistent with the terms of the plan makes contribution to the family education account.

13. For purposes of this section, the term "qualified institution of higher education" means an educational organization described in section 170(b)(1)(A)(ii) of the Federal Internal Revenue Code:

(1) Which provides an educational program for which it awards an associate, baccalaureate or higher degree or provides a program which is acceptable for full credit toward such a degree; and

(2) Contributions to or for the use of which constitute charitable contributions within the meaning of section 170(c) of the Federal Internal Revenue Code; and

(3) Which is legally authorized to provide and does provide a program of post-secondary education; and

(4) Which is accredited by a nationally recognized accrediting agency or association listed by the United States Secretary of Education.

14. Funds withdrawn from one family education account for transfer to the family education account of another designated beneficiary shall not result in the termination of the first account. No such transfer may be made which would cause total contributions to a family education account in a single year to exceed two thousand dollars.

15. A qualified higher education account shall terminate:

period.

16. The provisions of subdivision (1) of subsection 15 of this section shall not apply in the case of a rollover. A rollover occurs when the creator of a family education account withdraws all of the assets of such account and not later than sixty days subsequent to such withdrawal establishes a new family education account with the same named beneficiary and deposits therein an amount equal to the value of the asset so withdrawn. Such deposit shall not constitute a contribution within the meaning of this provision.

17. Upon termination of a family education account, the recipient of any distribution, including any distribution causing a termination, as designated in the plan, shall be liable for a ten percent excise tax on the full amount of the distribution. However, the tax rate shall be six percent on such distributions equal to but not exceeding nonrepayable student financial aid pursuant to notice received by the department of revenue from the institution of higher education and, further, no such tax shall be imposed if the beneficiary is deceased or judicially determined to be disabled or incapacitated as those terms are defined in chapter 475, RSMo. The provisions of subsection 3 of section 143.181, RSMo, notwithstanding, all distributions upon termination shall be deemed to be Missouri source income.

18. In the case of a nonresident beneficiary or creator, such tax is to be assessed against the trustee. However, the trustee shall collect the tax from the beneficiary or creator to the extent possible, but his inability to collect any part or all of the tax does not relieve him of the obligation to pay to the state the tax imposed by this section.

PRESIDENT AND SPEAKER)
SIGNED BY GOVERNOR
DATE: 2-19-87
CHAPTER NO: 26

ORIGINAL SENATE
FILE NO. 0040

ENROLLED ACT NO. 9, SENATE

FORTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
1987 GENERAL SESSION

AN ACT to create W.S. 21-16-501 through 21-16-505 relating to higher education; authorizing the deputy treasurer of the University of Wyoming board of trustees to receive advance payment of tuition, room and board at the University and Wyoming community colleges by individuals on behalf of beneficiaries; providing definitions; providing for advance payment contracts; providing for deposit of payments and investment of payments; specifying expenditures under advance payment; authorizing refund of payment and direct payment of benefits under certain conditions; granting rulemaking authority; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 21-16-501 through 21-16-505 are created to read:

ARTICLE 5

ADVANCE PAYMENT OF HIGHER EDUCATION COSTS

21-16-501. Definitions.

(a) As used in this article:

(i) "Advance payment contract" means a contract entered into by the program administrator and a purchaser pursuant to this article to provide for the higher education of a beneficiary;

(ii) "Beneficiary" means the individual designated within the advance payment contract to receive tuition, room and board at a state institution of higher education;

(iii) "Institution of higher education" means the University of Wyoming and the seven (7) community colleges within Wyoming;

(iv) "Program administrator" means the deputy trea-

under a contract providing for a reduced time limitation on the use of contract benefits pursuant to this subsection shall be subject to interest compounded annually at the rate of ten percent (10%) for the period of time the contract is reduced below seventeen (17) years, payable at the time of advance payment. The amount of the one (1) time advance payment together with interest paid under this subsection shall be refunded upon termination or modification of the contract pursuant to W.S. 21-16-504. Any investment earnings accruing to a contract under this subsection is not refundable.

(c) The advance payment contract shall specify one (1) of the payment options specified under this subsection to be required from the purchaser on behalf of the beneficiary. The one (1) time advance payment shall be made in cash or cash equivalents at the time the contract is signed. The program administrator shall annually determine the amount of the one (1) time advance payment for each of the following payment options:

(i) Not to exceed four (4) academic semesters of resident tuition, room and board at any community college located within Wyoming;

(ii) Not to exceed four (4) academic semesters of nonresident tuition, room and board at any community college located within Wyoming;

(iii) Not to exceed eight (8) academic semesters of resident tuition, room and board at the University of Wyoming or a combination of a community college within the state and the University of Wyoming; or

(iv) Not to exceed eight (8) academic semesters of nonresident tuition, room and board at the University of Wyoming or a combination of a community college within the state and the University of Wyoming.

(d) The advance payment contract shall prohibit payment of and the program administrator shall not pay a tuition benefit in

ORIGINAL SENATE
FILE NO. 0040

ENROLLED ACT NO. 9, SENATE

FORTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
1987 GENERAL SESSION

21-16-503. Disposition and investment of advance payments; payment to institutions of higher education; administrative costs.

(a) The program administrator shall deposit payments received under this article into an account within the University of Wyoming permanent endowment fund and shall account for each payment required from a purchaser on behalf of a beneficiary pursuant to the advance payment contract. All money deposited and accounted for pursuant to this article shall be invested by the program administrator in the manner provided for investment of other University of Wyoming funds. The program administrator, the state treasurer and the executive director of the Wyoming community college commission shall every three (3) months review investments made pursuant to this subsection and shall annually report to the legislature on the financial condition of the account and the investment portfolio.

(b) Expenditures from the account established under subsection (a) of this section shall be for payments to institutions of higher education on behalf of beneficiaries, payments of refunds and direct payment of benefits in accordance with W.S. 21-16-504 and for costs of administering this article. Administration fees shall be specified by contract and shall not exceed two percent (2%) of investment earnings accruing to the account.

(c) The program administrator shall establish a schedule for payment to institutions of higher education of the tuition, room and board costs on behalf of beneficiaries. Payment under this subsection shall not begin until the beneficiary applies to and is accepted by the institution of higher education. Upon completion or termination of an advance payment contract, the remaining balance of principal and investment earnings accruing to the contract shall be credited to the account established under subsection (a) of this section.

21-16-504. Refund of advance payment; conditions; direct

Rules and regulations adopted pursuant to this section shall include policies and procedures governing the:

(i) Receipt of payments from purchasers on behalf of beneficiaries;

(ii) Accounting and reporting to purchasers of payments deposited and invested in accordance with this article;

(iii) Period of time during which the beneficiary may receive benefits under the contract;

(iv) Terms and conditions under which contracts may be terminated or modified, refunds may be granted and direct payment of benefits may be made pursuant to W.S. 21-16-504;

(v) Provision of contract benefits at institutions of higher education;

(vi) Payment to institutions of higher education on behalf of beneficiaries;

(vii) Imposition of fees to cover costs incurred for the administration of this article not to exceed the limitation imposed under W.S. 21-16-503(b); and

(viii) Other terms, conditions and provisions determined necessary for advanced payment contracts and benefits provided under contracts.

APPENDIX B

ECS Survey Results

Education Commission of the States

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303-830-3600

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ECS OFFICERS 1987–88

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Minnesota

Vice Chairman
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South Carolina

Treasurer
Lynn O. Simons
Superintendent of
Public Instruction
Wyoming

President
Frank Newman

Vice President
Patrick M. Callan

ECS MEMORANDUM

DATE: 9 December 1987

TO: All Concerned

FROM: Jennifer Afton

RE: Survey of State Proposals for Tuition Prepayment Plans and Incentive Plans for Saving for College

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Enclosed is a state-by-state survey briefly outlining actions that each state has taken in regard to the above.

We realize that in some states the status of these actions may change rapidly. A survey being only a snapshot in time, some of this information may already need updating. If this is true for your state (or if you wish to add to or change anything) please contact either Dr. Aims McGuinness at (303) 830-3614 or myself at 830-3669.

EDUCATION COMMISSION OF THE STATES
SURVEY OF STATE PROPOSALS FOR TUITION PREPAYMENT PLANS AND INCENTIVE PLANS FOR SAVING FOR COLLEGE

State	Level Of Interest	Type of Proposal: Tuition Guarantee	Savings Program	Interim Studies	IRS Contingent	Other Proposals	Enacted Vetoed Underway	Study/Interim Committee	Comments
AL	Low								Informal discussion.
AK	Low								
AZ	Low								Informal discussion.
AR	Low			x				Interim study planned to design legislation for 1989 session.	
CA	High	x	x				Tuition guarantee & savings bond plans both vetoed 10/87. Governor's reasons: 1) plan not tested, 2) is government responsible for providing a savings plan, especially with numerous private sector plans? 3) possible future unknown costs to state.		
CO	Low								Bill to study was dropped. No action at this time

State	Level Of Interest	Type of Proposal: Tuition Guarantee	Savings Program	Interim Studies	IRS Contingent	Other Proposals	Enacted Vetoed Underway	Study/Interim Committee	Comments
CT	Moderate			X				Tuition guarantee bill dropped in 1987 session. Interim group to study various alternatives.	
DE	Low			X				General assembly resolution asked sec. of finance to investigate issue & report back 1/88.	
FL	High	X			Yes[1]	Education reinvestment act to permit AFDC recipients to set aside 10% of welfare payments in trust for education of children	Enacted 7/1/87, "Florida Postsecondary Cost Stabilization Fund" or "Florida Prepaid Postsecondary Education Expense Program". Includes 3 plans: 1) community college plan 2) university plan, & 3) dormitory residence plan. Fully implemented in 1988-89.		
GA	High	X	X	X			AFDC trust proposal passed senate. Carried over to 1988 session.	Alternatives for 1988 session being studied by regents & by house & senate committees	
HI	Low								
ID	Low								Proposals possible mid-January 1988 when new session begins.

State	Level Of Interest	Type of Proposal: Tuition Guarantee	Type of Proposal: Savings Program	Type of Proposal: Interim Studies	Type of Proposal: IRS Contingent	Other Proposals	Enacted Vetoed Underway	Study/Interim Committee	Comments
IL	High		X				Amendatory veto of savings bond plan by Governor. Govenor expected to sign after certain language changes. Two savings plan bills & one pre-paid tuition plan were vetoed.		State general obligation bonds to be issued as zero coupon college savings bonds. Interest earnings exempt from fed/state income taxes. State to add .25% interest if used for Illinois public or private college.
IN	High	X			Yes[1]		Enacted tuition prepayment plan. Provides: 1) 4-year, 124 credit hour plan w/principle minus admin fee refund, 2) same but w/interest refund, 3) 2-year plan same as 1). Bill effective 7/1/87; trust board must report to gen. assembly on/before 1/1/88 & trust may contact w/purchasers after 6/30/88.		Contract between purchaser & trust only. State & university make no guarantees.
IA	Moderate	X							Resolution to study issue was drafted but not acted upon. Tuition prepayment proposals debated in 1987 session.
KS	Low		X						Associated Students of Kansas has proposed a tax-deferred savings plan for 1988 session. Unsuccessful candidate for governor in 1986 wanted to propose a tuition prepayment plan. No action in 1987.

State	Level Of Interest	Type of Proposal: Tuition Guarantee	Savings Program	Interim Studies	IRS Contingent	Other Proposals	Enacted Vetoed Underway	Study/Interim Committee	Comments
KY	Moderate	X	X	X		Kentucky Educational Savings Plan proposal. Proposal doesn't guarantee total tuition will be covered unless an individual institution is willing to enter into such an arrangement with investors. The trust would return interest earned on principal for educational purposes. If beneficiary decides to attend a KY public or regionally accredited private, non-profit college or university, he/she would receive the above plus earnings from an endowment specifically established for the trust.		Proposal was developed by staff of KY Higher Ed Assistance Authority, Council on Higher Ed, & Council of Independent KY Colleges & Universities, was adopted by their boards & presented to the interim joint committee on education for study & consideration.	
LA	Moderate	X		X				Interim study requested 6/87. Two senate & 2 house bills previously introduced but did not pass.	
ME	High	X			Yes[1]		Enacted 6/87, pre-payment plan, Student Education Deposit Plan (SEED). Room & board not included Board of directors for the plan not yet appointed.		State allows high school students to take college courses free of charge thus saving on tuition, fees, room & board & easing the transition into college.

State	Level Of Interest	Type of Proposal: Tuition Guarantee	Savings Program	Interim Studies	IRS Contingent	Other Proposals	Enacted Vetoed Underway	Study/Interim Committee	Comments
MD	Moderate			X				Legislative subcommittee issued report rejecting all plans except possibly a savings plan. Governor's task force will make the same recommendation late October/early November 1988. Considering private savings plans with state coupons attached.	
MA	High	X	X	X				At governor's request board of regent's committee is studying issue. Draft proposal for both savings bonds & tuition prepayment certificates. Independents could participate fully. Report should be in by mid-Fall 1987. Aiming at comprehensive plan that will include independent institutions; also possible regional reciprocal provisions.	
MI	High	X			Yes		Enacted 12/86, tuition prepayment plan		

State	Level Of Interest	Type of Proposal: Tuition Guarantee	Savings Program	Interim Studies	IRS Contingent	Other Proposals	Enacted Vetoed Underway	Study/Interim Committee	Comments
MN	High	X		X				Proposed bill laid over interim for study. Two studies underway. MN higher ed coordinating board studying overall issue & legislature studying overall issue & specific legislation. Possibility legislature won't accept anything in which the state has liability.	Bill was introduced but died in committee.
MS	Low	X							
MO	High	X	X	X				Savings & guaranteed tuition bills were actively debated in 1987 legislature. One bill would propose IRA type savings accounts for tuition only. Study by joint interim committee on access to higher ed underway.	
MT	Low								Studying pros & cons. Collecting information. Governor has expressed some interest. No action in 1987.
NE	Low								Waiting to see what other states are doing & how IRS rules.

State	Level Of Interest	Type of Proposal: Tuition Guarantee	Savings Program	Interim Studies	IRS Contingent	Other Proposals	Enacted Vetoed Underway	Study/Interim Committee	Comments
NV	Low								Board of Regents decided, after study, to postpone action until after IRS rules.
NH	Low	X		X				Bill has been referred to interim committee which is currently studying it.	
NJ	High	X		X			Proposed senate bill passed; still waiting on assembly bill. Senate bill has provisions for participation by independent institutions; purchase of tuition by certificate; & that at least 90% of tuition will be paid to participating institutions.		
NM	Low								Bill proposed but it died. No further legislation proposed. May consider educating the public about the wisdom of saving. Concerns that prepayment plans require too much state involvement & are fiduciarily risky.
NY	Moderate	X		X	X	Regents College Savings Fund proposal would establish individual education accounts similar to IRA's; includes matching funds for low income participants.		Senate research service completing study.	Several bills proposed and considered including prepayment plan.

State	Level Of Interest	Type of Proposal: Tuition Guarantee	Type of Proposal: Savings Program	Type of Proposal: Interim Studies	Type of Proposal: IRS Contingent	Other Proposals	Enacted Vetoed Underway	Study/Interim Committee	Comments
IC	High		X				Ratified 7/87: college savings bond plan. Bill authorizes sale of tax-free bonds in denominations small enough to help parents save for children's college education. Bonds will be marketed as ideal vehicle for educational savings.		
ND	Low			X				Study resolution passed but was not given priority. Currently on hold.	Proposed bill in committee at end of session. Will be carried over to 1988 session. Attitude is "wait and see." Better to study issue than pass bills in haste.
OH	Low		X						
OK	High		X	X	X			Law passed to have state regents for higher ed study developing a program to create at least one trust fund for tuition & fee prepayment. IRA-type proposal also being considered. Includes matching state funds for low income families.	

State	Level Of Interest	Type of Proposal: Tuition Guarantee	Type of Proposal: Savings Program	Type of Proposal: Interim Studies	Type of Proposal: IRS Contingent	Other Proposals	Enacted Vetoed Underway	Study/Interim Committee	Comments
OR	Moderate	X		X				Bill proposed & waiting for further study. May be interim studies on the issue in 11/87.	
PA	Moderate	X	X	X				Combines educational IRA with a guarantee plan. Committee continues to study the bill & recommendations.	
RI	High	X	X	X				Bill passed to establish commission to study issue; findings to be reported by 11/16/87. Growing interest in college savings bond approach.	
SC	Moderate	X						Bill did not get out of committee. Interim study of the issue.	
SD	Low								
TN	High	X			Yes[1]		Enacted 5/87; tuition prepayment plan. Will be implemented when IRS rules favorably. Scheduled for 7/88.		

State	Level Of Interest	Type of Proposal: Tuition Guarantee	Savings Program	Interim Studies	IRS Contingent	Other Proposals	Enacted Vetoed Underway	Study/Interim Committee	Comments
TX	Low	X		X				Bill proposed but tabled due to tax financial considerations. Interim study has been requested.	
UT	Moderate	X				Utah has produced a brochure entitled "Your Child's College Education, Invest in in Tomorrow. . .Today," that they disseminate in hospitals, day care centers, etc. Hope to encourage parents to save.			Board of regents was planning study of prepayment plans; study did not get priority. Bill reflecting tuition guarantee idea to be drafted for 1988 session.
VT	Moderate	X	X	X					Bill proposed but held over until 1/88. Committee studying state & federal alternatives & options. Should have results by mid-November.
VA	Low		X	X		Joint resolution for tax incentive savings plans for college ed was introduced 1/87 but failed. Bill will most likely be proposed in 1988.		State Council of higher ed involved in comprehensive study of higher ed finance. Study will include tuition prepayment plans. Will probably stay with the tuition savings bond approach rather than prepaid tuition.	

State	Level Of Interest	Type of Proposal: Tuition Guarantee	Savings Program	Interim Studies	IRS Contingent	Other Proposals	Enacted Vetoed Underway	Study/Interim Committee	Comments
WA	Moderate	X		X		Bill proposed but tabled until next year.		State higher ed loan authority studying options for savings incentive plans Interim study by the standing committee on higher ed will be presented to legislature when it reconvenes.	
WV	High	X					Bill passed House & Senate. Was vetoed by Governor in 6/87. May be re-introduced next session.		
WI	Moderate							University regents tasked with preparing a study & legislative language by 11/88.	Primary concerns include fiscal and administrative problems.
WY	High	X			No		Enacted 2/87, contracts being accepted. Provides for advance payment of resident & non-resident tuition as well as room & board.		

Conducted by Alms C. McGuinness, Jr., Assistant Executive Director for Higher Education, and Jennifer Afton, Research Assistant, Education Commission of the States, 1860 Lincoln Street, Suite 300, Denver, CO 80295, 303-830-3600. Information gathered through telephone interviews with legislative staff in 50 states. This survey will be updated periodically. Some of the information may already be out-of-date.

[1]The Michigan statute states explicitly that the trust cannot enter into contracts until a favorable IRS ruling is received. Other state statutes say that the board must solicit answers to appropriate ruling requests from the IRS and must make the status of those requests known before entering into a contract.

APPENDIX C

HR 1062 (ISP 87-29)

By: Representatives Barclay and Matthews H.R. 1062

HOUSE RESOLUTION

REQUESTING A STUDY BY THE APPROPRIATE JOINT INTERIM COMMITTEE OF THE DESIRABILITY AND FEASIBILITY OF IMPLEMENTING IN ARKANSAS A GUARANTEED STATE COLLEGE TUITION PROGRAM, PATTERNED AFTER OTHER STATES WHERE SUCH PROGRAMS HAVE BEEN UTILIZED, AND TO REPORT THE FINDINGS OF SAID STUDY TO THE SEVENTY-SEVENTH GENERAL ASSEMBLY OF THE STATE OF ARKANSAS.

WHEREAS, college attendance has proven to be beneficial both to the individual and to society at large from social, economic and political perspectives; and

WHEREAS, recent cuts in federal aid to education along with eroding state support have begun to lead to a decline in college enrollments and could result in increased declines in the near future; and

WHEREAS, the state of Michigan has recently initiated a unique program to guarantee state college tuition to future students by permitting their parents and grandparents to make an initial lump sum pre-payment for their newborn children's educations; and

WHEREAS, Michigan's innovative approach to the problem of providing tuition for qualified college bound students is worthy of further study and serious consideration,

NOW THEREFORE,

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE SEVENTY-SIXTH GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

That an appropriate joint interim committee shall conduct a study of the existing guaranteed state college tuition programs to determine the desirability and feasibility of establishing a similar program in Arkansas.

The committee shall complete the study and report its findings and recommendations no later than December 1, 1988, in time for possible consideration by the Seventy-Seventh General Assembly in January, 1989.

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